IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1390 (SS) OF 2004

Ganesh Dutt Kalkhundia, S/o late Sri Harikishan Kalkhundia, R/o Village and Post Office Khetikhan, District Champawat, Uttaranchal. .....Petitioner.

Versus

1. Union of India, through the Secretary Ministry of Communication, Govt. of India, New Delhi.
2. The Chief Post Master General Uttaranchal Circle, Dehradun.
3. The Superintendent of Post Office, Pithoragarh, Division Pithoragarh. .....Respondents.

Sri Kishore Kumar and Sri Bipin Mohan Pingal Advocate for the petitioner.
Mrs. Anjali Bhargava, Advocate for the Union of India.

Dated: 03.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to pay the pension and other pensionery benefits from the date of retirement i.e. 31.03.2003. Further the petitioner has prayed for a writ of mandamus commanding the respondents to pay the arrears of the pension of the petitioner, gratuity as well as all other retrial benefits along with interest.

Brief facts giving rise to the present writ petition are that the petitioner was appointed as Chaukidar in the Postal Department Pithoragarh region in the month of February, 1982 at Post Office Khetikhan District Pithoragarh now district Champawat. He retired from service on 31.03.2003 from the Postal Department, but he was not given the pensionery

benefits although he has made a representations on 1st November, 2004.

The grievance of the petitioner is that he was continuously engaged as a Chaukidar after February, 1982 when he ws given temporary status, but he became salaried employee and continued in the capacity up to 31.03.2003.

The petitioner has relied upon the judgment of the Central Administrative Tribunal passed on 21st July, 2000 in Chandra Devi Bhatt Vs. Union of India and others, where it has been held that after rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at per with temporary Group 'D' employees for the purpose of contribution to General Provident fund.

The petitioner has already made a representation in this regard. The same shall be considered within a period of three months from the date of presentation of the certified copy of the order. A counter affidavit has been filed where it has been held that the petitioner was given the temporary status and he continued to work on the temporary status as a Chaukidar.

In ***D.S. Nakara and others Vs Union of India reported in AIR 1983 Supreme Court 130,*** the concept of social justice has been laid down by the Apex Court. Relevant observations of are quoted below:

> *"65. That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; 'being in service and*

retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogenous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date in impugned memoranda, Exhibits P-1 and P-2 violates Article 14 and is unconstitutional and is struck down."

The Hon'ble Apex Court in the case of Kapila Hingorani has also emphasised for improving the methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, wherein paragraph 50 of the judgment, the term "life" has been defined relying upon the judgment of Field, J. in Munn V. Illinois reported in 1887 (94) US 1131, as under:

" *Paragraph – 50: The term 'life' used in Article 21 of the Constitution of India has a wide and far reaching concept. It includes livelihood and so many other facets thereof. 'Life', as observed by Filed, J. in Munn V. Illinois [1877(94)US 1131] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and facilities by which life is enjoyed. [See Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others [1983(1) SCC 124] and Olga Tellis and others Vs Bombay Municipal Corporation and others [1985(3) SCC 545].*

In view of the aforesaid law laid down by the Apex Court the respondents are directed to consider the representation of

the petitioner for pensionery benefits within a period of three months in accordance with law.

Subject to the aforesaid, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

03.03.2006

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